RECENT IMPORTANT DECISIONS

Assignment for Creditors—Validity of Common Law Assignment Under State Statutes—Assignee May Maintain Replevin.—One C., a merchant, becoming insolvent, made a common-law assignment to P. for the benefit of creditors. P. took possession of the stock of merchandise and other property and proceeded to administer the trust. A creditor secured a judgment against C., and on execution D., a constable, levied upon property in P.'s possession. P. brings replevin. *Held,* the common-law assignment is valid as far as the state of Illinois statutes are concerned, and therefore P. can recover. *Pogue* v. *Rowe, Constable* (1908), — Ill. —, 86 N. E. 207.

The Bankruptcy Act July 1, 1898, c. 541, U. S. Comp. St. 1901, p. 3418, suspended the state statutes in reference to voluntary assignments for the benefit of creditors. *Harbaugh* v. *Costello,* 184 Ill. 110, 56 N. E. 363. Accord: *Parmenter Mfg. Co.* v. *Hamilton,* 172 Mass. 178; *In re Curtis,* 91 Fed. 737. The right of a debtor to make a common-law assignment exists independent of statute. *Lucy* v. *Freeman,* 93 Minn. 274, 101 N. W. 167. The right of a debtor to make a common-law assignment will be regarded as existing in each of the states of the union, unless shown to be expressly prohibited. *J. Walter Thompson Co.* v. *Whitehead,* 185 Ill. 454, 56 N. E. 1106. Such assignments are valid as far as the state statutes of Illinois are concerned. *Howe* v. *Warren,* 154 Ill. 227, 40 N. E. 472. The title vests in the assignee upon the execution of the instrument. *Brennan* v. *Wilson,* 71 N. Y. 502; *Weber* v. *Mick,* 131 Ill. 520. The assignment passed the title to the assignee and he could maintain replevin for same. *Kimball* v. *Mulhern,* 15 Ill. 205; *Nimmo* v. *Kuykendall,* 85 Ill. 476.

Bills and Notes—Fraud—Ability to Read.—An agreement was made between the payee and the maker of a note that the latter should present the same to this defendant for his signature as a "mere witness," and later it was agreed the payee of the note should attempt to hold the defendant as a surety. An action is brought by which it is sought to make him, who placed his name on the note under that of the maker, liable as upon a contract of suretyship. *Held,* that the defendant, although he could read, is not bound by the obligation which the note expresses, but is to be looked upon as a "witness" according to the terms of the contract with the maker. *Barco* v. *Taylor* [1908], — Ga. App. —, 63 S. E. 224.

It is true, as a general rule, that parol evidence is not admissible to vary the terms of a written contract. *Serviss* v. *Stockstill,* 30 Oh. St. 418. But the rule does not apply where the contract has been procured by fraud. *Barco* v. *Taylor,* supra; *Larrabee* v. *Fairbanks,* 24 Me. (11 Shep.) 363. As between the parties to the instrument, the principal case laid down the rule distinctly that the fraud of the maker may be used as a defense on the part of the defendant. As to such a defense in a suit by a bona fide holder of the instrument, it has been allowed upon the ground that "the mind of the

signer did not accompany the signature." *Foster* v. *Mackinnon,* L. R. 4 C. P. 704. The American cases have held that before he can succeed in a defense against a bona fide holder, the signer of the instrument must show not only that his mind did not accompany the instrument, but also that he was free from negligence in affixing his name. KNOWLTON'S ANSON, CONTRACTS, p. 162, and cases cited.

BILLS AND NOTES—SIGNATURE BY AGENT OR REPRESENTATIVE—PERSONAL LIABILITY.—Plaintiff sued defendant on a promissory note in the following form: "Six months after demand I promise to pay to Mrs. M. Chapman the sum of 300 pounds, for value received, together with 6% interest per annum. J. H. Smethurst's Laundry and Dye Works, Limited, J. H. Smethurst, Managing Director." The words "J. H. Smethurst's Laundry and Dye Works, Limited," and "Managing Director" were impressed with a rubber stamp, the rest of the note being in writing. *Held,* that the defendant was primarily liable on the note, as he had not qualified his promise by the addition of any words to show that he merely signed as agent for the company. *Chapman* v. *Smethurst* [1909], 1 K. B. 73, 78 L. J. R. K. B. 84.

"This case is very near the line and is one upon which it is very difficult to form a clear and confident opinion," says the court, but sustains the liability of the defendant upon the intention to so bind himself as expressed in the note itself. BIGELOW, BILLS AND NOTES, p. 45; BUNKER, NEGOTIABLE INSTRUMENTS, § 22, cases cited; *Fuller* v. *Hooper,* 3 Gray 334, 341; *Slawson* v. *Loring,* 5 Allen, 340. External evidence to show an undisclosed principal cannot be used in construing a negotiable instrument, as it can a common law contract. *Fuller* v. *Hooper,* supra. "The difference between the two systems should be well noted." BIGELOW, supra, p. 45. The maker of the note cannot claim exemption unless the instrument purports to bind the principal, and a mere disclosure of the latter is not sufficient to bind him. *First National Bank* v. *Wallis,* 50 N. Y. 455. Other parts of the note than the signature may be used in determining whether the principal is to be bound. *Whitney* v. *Inhabitants of Stow,* 11 Mass. 368. The rule as stated in most of the cases seems to be that the principal is not bound unless there is clear evidence that the instrument purports to bind him. *Whitney* v. *Inhabitants of Stow,* 11 Mass. 368. BIGELOW, BILLS AND NOTES, and cases cited, p. 44. In the principal case the court quoted with approval from *Lindus* v. *Melrose,* 27 L. J. Ex. 326, in which COLERIDGE, J., said: "An agent putting his name to a mercantile instrument is liable as a principal unless the instrument distinctly shows that he signs as agent." The principal case seems to foster a presumption in favor of the liability of the agent.

BOUNDARIES—MEANDER LINE AS BOUNDARY IN GOVERNMENT GRANTS—MISTAKE IN SURVEY.—In a suit to quiet title to land lying between the meander line established by government survey and the banks of a non-navigable lake, plaintiff claimed through a grant of swamp-lands, while defendants claimed the land by virtue of their riparian rights as owners of the fractional sections of land bordering on the meander line. The govern-